

The Honorable Christopher M. Alston
Chapter 11
Hearing Location: Rm 7206
Hearing Date: Friday, March 9, 2018
Hearing Time: 9:30 am
Response Date: March 8, 2018 (5 pm)

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re

NORTHWEST TERRITORIAL MINT, LLC,

Debtor.

No. 16-11767-CMA

Memorandum of Law in Support of
Limited Objections to the Sale of Dies
and Associated work by the Debtor,
either as Medallic Owned or NWTM
Owned

Comes now, the American Numismatic Association (“ANA”), Dick Johnson (“Johnson”) and Friedrike Merck (“Merck”), by and through their attorney, Michelle Carmody Kaplan, of Kaplan Law PLLC, and hereby submit this Limited Objection to Trustee’s Motion For Order Approving the Sale of Certain of the Debtor’s Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances to Medalcraft Mint, Inc. (Dkt. No. 1457).

I. GENERAL OBJECTION – Medallic Art Company v. Northwest Territorial Mint

The Trustee has amended the proposed APA with Medalcraft in an attempt to clarify that the sale only involves “Medallic archives, written files and reproduction files dated on or after January 1, 1998 and a copy of all electronic files” and “Medallic company owned dies and trim tools which were created on or after January 1, 1998 and associated Racks.” [ECF No. 1491-1]. However, the difference between Medallic and Northwest Territorial Mint remains unclear. There is no bright line delineation between Northwest Territorial Mint

Interested Parties Objection to Sale - 1

KAPLAN LAW PLLC

2155 - 112th Ave. NE
Bellevue, WA 98004
Phone: 425-818-4818
Fax: 425-484-4444

1 (“NWTM”) and the Medallic Art Company (“MACO”) after 2009. This Court previously
2 ordered a consolidation of the assets of MACO and NWTM [ECF No. 86]. The MACO
3 website, at the bottom of any page, states that “Medallic Art Company is a division of
4 Northwest Territorial Mint.” [Marks Declaration, ECF No. 1412-11, p.2]. The advertisement
5 from NWTM pronouncing “We’ve got your Dies” boasts 309,405 dies, which must necessarily
6 include both NWTM dies and MACO dies. [ECF No. 1412-10].

7 The line between NWTM and MACO assets is blurry at best. For example, some
8 customers would get emails regarding NWTM, but signed by an employee of “Medallic Art &
9 Mint”. [ECF No. 1412-9] (Email from NWTM but signed by “Debi Davis, Custom Sales
10 Assistant, Medallic Art & Mint”). In some cases, the Invoice for a custom die is on a heading
11 that says “Northwest Territorial Mint LLC dba Medallic Art Company.” This was the case in
12 an earlier motion for return of dies by Ray Pollard. [ECF No. 295, Ex. 5, p. 8]. So is a sale by
13 Northwest Territorial Mint, dba Medallic Art Company, a MACO asset or a NWTM asset?
14 Unfortunately, it is impossible for Interested Parties to know. In the Trustee’s Motion to return
15 Mr. Pollard’s dies, the Trustee admits that the “Debtor’s records of ownership of dies are
16 inadequate.” [ECF No. 457 p.3]. If those records are inadequate, how is the Trustee
17 determining which dies are MACO dies and which dies are NWTM dies?

18 As a result of these unknowns, original Interested Parties Gary Marks, Heidi Wastweet
19 and New York Numismatic Club continue there objections to the extent the proposed sale
20 includes any Dies and Associated Works (meaning all associated artwork, sample strikes,
21 specimens, galvanos, sculpts or electronically stored information) that may be included in the
22 sale of MACO assets.

23 Additionally, a number of additional customers will be submitting objections and
24 requesting the return of their Dies and Associated Works which either pre-date 1998 or were
25 made by Northwest Territorial Mint, including but not limited to: the heirs of Marcel Jovine;
26 The National Sculpture Society; Grove Minting Company; and Bob Palmisano. To the extent

1 the current APA with Medalcraft includes any dies or associated Works with these Interested
2 Parties, they hereby object.

3 Although Interested Parties object to the sale based on inadequate information as to
4 what is included, in the event a sale proceeds, Interested Parties would request the following
5 language be included in any Order of the Court and as part of the APA:
6

7 “This sale includes only dies, archives, sample strikes, finished coins,
8 specimens, galvanos, sculpts, written files and reproduction files related
9 solely to Medallic Art created or dated after January 1, 1998. All such dies
10 and associated works shall be limited to those assets that are specifically
11 identified by an exclusive MACO identifier or code, and are not associated
12 in any way with the Northwest Territorial Mint. In the event any assets are
13 discovered that do not fall within this category shall be returned immediately
14 and shall not be retained by buyer.”

13 **II. INCORPORATION OF PREVIOUSLY SUBMITTED OBJECTIONS**

14 Section 363 of the Bankruptcy Code does not provide authority for the Debtor to sell
15 property it does not own. *See Folger Adam Sec., Inc. v. DeMatties/MacGregor, JV*, 209 F.3d
16 252, 263 (3d Cir. 2000) (property not part of the bankruptcy estate is not subject to a section
17 363 sale). Prior Interested Parties have briefed the issue regarding their ownership of the dies
18 and associated intellectual property that has been stored by debtor. Interested Parties herein
19 adopt their objections and Supporting Declarations previously submitted to the Court: (Dkt.
20 No. 1406 – Marks and Wastweet Ojbection); (Dkt. Nos. 1407 and 1412 – Declarations of
21 Wastweet and Marks); (Dkt. No. 1408 – Objection of NYNC); (Dkt. Nos. 1409, 1410, 1411 –
22 Declarations of Marinescu, Miller and Anderson); and the Limited Objection of the New York
23 Numismatic Club, Gary Marks and Heidi Wastweet to the Medalcraft Sale Motion (ECF No.
24 1488).

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1 **III. OBJECTION TO NOTICE**

2 Interested parties object to the inadequacy of the Notice itself. In the letter to customers
3 sent out by the Trustee, the Trustee writes “I believe that NWTM or Medallic Art Company is
4 the owner of the dies which I seek authority to sell.” [ECF No. 1477-2]. Thus, the notice
5 doesn’t identify any distinction between Medallic dies and NWTM dies. In the Notice itself,
6 the Trustee “submits that, with very limited exceptions, NWTM and Medallic own the physical
7 dies which have been manufactured in order to produce medals and coins on behalf of NWTM
8 and Medallic customers. **The Trustee intends to convey title to the company owned dies**
9 **to Medalcraft in connection with the proposed sale.**” [ECF No. 1477-1] (emphasis added).
10 The final sentence refers to conveying title to “**company owned dies**”, not Medallic dies. In
11 this context, “company” must refer to both NWTM and MACO.

12 Interested Parties also object to the timing of the notice and submit that potentially
13 thousands of customers will not have the opportunity to present objections to the potential sale
14 of their property. Realistically, the first business day most received the Trustee’s notice would
15 have been Monday, March 5th and they had 4-days to figure out if their dies were included in
16 vague and ambiguous APA, dig through historical records, which may have been stored off-
17 site, find counsel and file a timely objection. The Interested Parties herein do not believe that
18 4-days’ notice meets the Trustee’s burden to provide notice. Due process requires that a party
19 seeking relief must give “notice reasonably calculated, under all the circumstances, to apprise
20 interested parties of the pendency of the action and afford them an opportunity to present their
21 objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). The
22 bankruptcy code “requires the trustee or debtor in possession to provide parties in interest with
23 adequate notice and an opportunity to be heard before their interests may be adversely affected.
24 *Western Auto Supply Co. v. Savage Arms, Inc. (In re Savage Indus., Inc.)*, 43 F.3d 714, 720
25 (1st Cir. 1994).
26

1 **IV. RELEVANT FACTS**

2 Although the Trustee admits that the Debtor's records regarding ownership of the Dies¹
3 is "inadequate", he seeks to sell all of the MACO Dies without offering convincing information
4 or evidence that the remaining dies are even owned by MACO.

5 In response to Interested Parties Marks, Wastweet and NYNC's Objection, the Trustee
6 submitted the Declaration of Paul Wagner [ECF No. 1428]. Mr. Wagner submitted an image of
7 the NWTM website that includes language indicating that NWTM owns the dies. However, Mr.
8 Wagner did not provide evidence as to when similar language was added to the MACO website.
9 Further, that language specifically talks about the Die Library being a "repository", meaning a
10 place where things are stored. It then talks about copyrights for all "artwork it creates" and only
11 then talks about ownership of the dies. In other words, NWTM owns the dies when it provides
12 the artwork, which is not necessarily a contested issue by Interested Parties.

13 Mr. Wagner has also submitted copies of sales quotations that have language indicating
14 that, in that case, NWTM owns the dies. [ECF No. 1459, Exhibit A]. However, in that case, it is
15 clear that NWTM was actually creating the artwork for the project. Page 3 of Exhibit A shows
16 the graphic artist as Angel Dey. The policy of die ownership as it relates to projects where either
17 NWTM or MACO provided artistic involvement is not before the Court. Mr. Wagner also argued
18 that when NWTM or MACO created the artwork, it might retain an interest in the Copyright.
19 [ECF No. 1459, Exhibit B]. Again, that issue is not being challenged. Finally, Mr. Wagner points
20 to a MACO sales order with limitation language, but does not address whether MACO artists
21 were involved in its creation. On the other hand, in Marty Colwell's earlier Declaration in support
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26 ¹ Hereinafter Dies shall include not only the dies, but also any sample strike or specimen made by the die, all galvanos, sculpts or other copies of the artwork in any medium, including digitally stored

1 of Trustee's Second Motion for Order Granting Authority to Return Stored Inventory to
2 Customers, he admits that the customer in question, in that case Henri Klingler, "purchased the
3 dies". [ECF No. 1147, ¶ 3].

4 The fact is that since 1907 and at least until this bankruptcy was filed, the position of
5 MACO was that the customer owned the dies when the customer provided all of the artwork.

6
7 **A. Dick Johnson, MACO Director of Research and Company Historian**

8 Dick Johnson, who writes numismatic books and articles under the name D. Wayne
9 Johnson ("Johnson"), was hired by MACO in 1967 as its Director of Research. Declaration of
10 Dick Johnson ¶ 1. His work included researching medallic sales, creating a catalogue of past
11 medallic issues, writing speeches for the Company president and editing MACO's newsletter. *Id.*
12 Johnson started by cataloguing MACO medals from the start of the company, 1907. In doing
13 that, he created an archive of over 6,121 medallic items, ending in 1997 when he left the company.
14 *Id.* His early work was kept on a 3x5 card that included a photograph of the medal, size, artist
15 and customer. *Id.*, *Exhibit A*. After a sabbatical where he invested in his own business ventures,
16 Johnson was named MACO Historian and Senior Consultant in 2010. In that position he advised
17 management on medallic issues and MACO history, wrote a weekly report and generally
18 responded to historical questions from collectors and the public. *Id.* at ¶ 3. At that time, he was
19 compiling information in order to write a book on the history of the Medallic Art Company.
20

21 Mr. Johnson's extensive expertise both in the numismatic field, and with MACO
22 specifically, cannot be challenged. His list of accomplishments, publications and awards is set
23 forth in detail in his Declaration, including the fact that he is the author of an encyclopedia on
24 coin and medal technology. According to Mr. Johnson, "**nobody alive has more knowledge**
25 **about the MACO die library and archives than myself.**" *Id.* at ¶ 3. Based on Mr. Johnson's
26

1 personal knowledge of MACO, he is adamant that the policy of MACO, at least between 1907
2 and 1977, was that the customer owned any custom die they ordered and paid for. *Id.* at ¶ 4.

3 He also admits that there was a strong preference for customers to store their dies at
4 MACO. Notwithstanding the economic benefit, the concern from a numismatic perspective was
5 the importance of storing dies in a safe, stable and low moisture environment. Mr. Johnson
6 remembers numerous times when customers requested their dies and MACO provided them to
7 the customer. *Id.* Mr. Johnson describes his understanding, a non-legal opinion, that the
8 relationship was that of bailment. *Id.*

10 **B. More Recent Evidence of Ownership**

11 The Court has already been presented with evidence from the MACO website referring to
12 the dies as being owned by the Customer. [ECF No. 1406]. As well as evidence that in the past,
13 whenever a customer asked for their die to be returned, it was. [ECF nos. 1406 and 1408].

15 Angela Day was an employed at MACO as a graphic artist from 2008 until June 2015.
16 See Declaration of Angela Day, ¶ 1. In fact, Ms. Day was the Graphic Artist identified in the
17 quotation submitted by Mr. Wagner in his earlier declaration. For most of her time there, Ms.
18 Day was the only graphic artist employed by MACO. Ms. Day was told by her MACO
19 supervisors and salespeople that the policy of MACO was that when a customer paid for a die to
20 be made, the customer owned the die. *Id.* at ¶ 2. It was common understanding at MACO that
21 the customer owned all of the artwork the customer provided and further that MACO's only right
22 was to create medals under the direction of the customer. *Id.* Similar to Johnson, Ms. Dey's
23 understanding was that the Company policy was to strongly urge the customer to store their die
24 at MACO. *Id.* ¶ 7.

26 Ms. Dey also had knowledge of the "Die Log" that was kept by MACO. The log identified

1 each die by year, customer and included a short description. *Id.* at ¶ 8. She knows that MACO
2 struck one additional coin to keep in its archive drawers in a separate locked room. *Id.* She
3 viewed many historical medals while she worked at MACO. *Id.*

4 **V. Conclusion**

5 Before any sale is authorized by this Court, the Trustee should provide additional evidence
6 that the Dies belong to MACO and not the Customer. The Trustee has access to a list that includes
7 dies that indicate they belong to MACO, meaning the identifier lists them, for example, as “maco
8 2010-003”. However, and specific to the current motion, the Court should not allow the Trustee
9 to sell property that is owned by the Interested Parties and not the Debtor. Finally, the Interested
10 Parties do not understand how the Court can rule on the Medalcraft Sale Motion until it resolves
11 the underlying ownership issue.
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13 DATED this 8th day of March 2018.
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15 **KAPLAN LAW PLLC**

16
17 By /s/ Michelle Carmody Kaplan
18 Michelle Carmody Kaplan
19 WSBA No. 27286
20 Attorney for Interested Parties Club
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